

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FILED

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FIRST JUDICIAL DISTRICT

Case Type: Mechanic's Lien Foreclosure

SCOTT COUNTY COURTS

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Stewart Plumbing, Inc.,

Scott County Court File: 70-CV-08-12388

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

vs.

Eric L. Wegner and Jennifer Wegner,
Wells Fargo Bank, N.A., Cemstone
Products Corporation, Automated
Building Components, Inc., Elite Waste
Disposal, M.W. Johnson Construction,
Inc.,

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Stewart Plumbing, Inc.'s ("Stewart") Motion for Summary Judgment. Susanne M. Glasser, Esq. appeared on behalf of Stewart. Steven R. Little, Esq. appeared on behalf of Defendants Eric L. Wegner and Jennifer Wegner (the "Wegners") and Wells Fargo Bank, N.A. ("Wells Fargo"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Scott County, Minnesota, legally described as follows:

Lot 10, Block 5, Thomas A. Phillip Addition

(the "Property").

2. Stewart entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Stewart provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to the Wegners by way of a warranty deed dated September 10, 2007, which was recorded with the Office of the Scott County Recorder on October 5, 2007, as Document No. 784843. The Wegners are the current fee owners of the Property.

4. Wells Fargo is the holder of a mortgage secured by the Property, given by the Wegners, as mortgagors, in favor of Wells Fargo, as mortgagee, which was recorded with the Office of the Scott County Recorder on October 5, 2007, as Document No. 784844 (the "Wells Fargo Mortgage").

5. Stewart recorded a mechanic's lien statement against the Property in the original principal amount of \$14,900.00 with the Office of the Scott County Recorder on October 23, 2007, as Document No. 786067 ("Stewart's Mechanic's Lien Statement").

6. Stewart's last item of improvement to the Property was July 24, 2007.

7. Stewart commenced this action on May 23, 2008, within one year of its last item of improvement to the Property.

8. Stewart's Mechanic's Lien is valid in the original principal amount of \$14,900.00 and is prior and superior to the rights, title and interests of the Wegners and Wells Fargo in the Property.

9. Defendant Cemstone Products Co. ("Cemstone") recorded a mechanic's lien against the Property with the Office of the Scott County Recorder on September 14, 2007, as Document No. 783186 ("Cemstone Mechanic's Lien Statement").

10. Cemstone recorded an amended mechanic's line statement against the Property with the Office of the Scott County Recorder on October 8, 2007, as Document No. 784893 ("Cemstone Amended Mechanic's Lien Statement").

11. Despite being properly served, Cemstone failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien or Amended Mechanic's Lien.

12. More than one year has passed since the last item of improvement of June 12, 2007 that Cemstone claimed it provided to the Property as set forth in its Amended Mechanic's Lien Statement.

13. Defendant Elite Construction Services, Inc., d/b/a Elite Waste Disposal ("Elite") recorded a mechanic's lien statement against the Property with the Office of the Scott County Recorder on December 10, 2007, as Document No. 789316 ("Elite Mechanic's Lien Statement").

14. Despite being properly served, Elite failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

15. More than one year has passed since the last item of improvement of August 27, 2007 that Elite claimed it provided to the Property as set forth in its Mechanic's Lien Statement.

CONCLUSIONS OF LAW

1. Stewart is entitled to summary judgment.
2. Stewart's Mechanic's Lien against the Property is valid and enforceable in the amount of \$9,400.00 in principal, together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 1,409.96 through Oct. 22, 2009, which continues to accrue at the rate of \$ 1.63 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 2,279.70 and costs and disbursements in the amount of \$ 302.23 for a total judgment of \$ 13,416.34.
3. Stewart's Mechanic's Lien is prior and superior in all respects to the Wegners' and Wells Fargo's interests in the Property.
4. The Mechanic's Liens of Cemstone and Elite, as described herein, have expired and are void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.
5. Stewart's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Scott County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.
6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Stewart with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.
7. The sale shall be reported to and made subject to the approval of this Court. At that time, Stewart may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

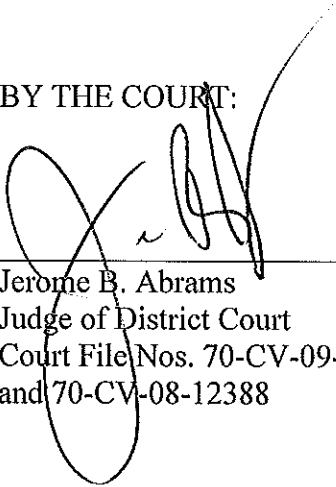
8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that the Wegners and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the Wells Fargo Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Stewart's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Scott County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment for recording against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:

Dated: 11-5, 2009



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-08-12388

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 11-6-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY Audrey K Brown